

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SHAWN DRUMGOLD,	)	
PLAINTIFF	)	
	)	
VS.	)	C.A. NO. 04-11193NG
	)	
TIMOTHY CALLAHAN, FRANCIS M.	)	
ROACHE, <b>PAUL MURPHY</b> , RICHARD	)	
WALSH, AND THE CITY OF BOSTON,	)	
DEFENDANTS	)	
	)	

DEFENDANT, PAUL MURPHY'S  
AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

The Defendant, Paul Murphy, files this answer to Plaintiff's Complaint, expressly reserving all rights to seek additional relief or raise additional defenses to the allegations contained in Plaintiff's Complaint by appropriate motion.

Defendant Paul Murphy responds to the paragraphs set forth in the Complaint filed in the above action ("Complaint") as follows:

FIRST DEFENSE

INTRODUCTION

1. The Defendant Paul Murphy does not understand this paragraph to require a response from him. To the extent that a response is contemplated or required, the Defendant denies all allegations contained therein.

JURISDICTION

2. The Defendant Paul Murphy is not required to respond to the legal conclusions set forth in Paragraph Two of the Complaint. To the extent that any response is contemplated or required, the Defendant Paul Murphy denies the allegations contained therein.

PARTIES

3. The Defendant, Paul Murphy, is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph Three of the Complaint.

4. The allegations contained in Paragraph Four of Complaint are not directed to Defendant Paul Murphy. Accordingly, Defendant Paul Murphy does not respond to the contents of this paragraph.

5. The allegations contained in Paragraph Five of Complaint are not directed to Defendant Paul Murphy. Accordingly, Paul Murphy does not respond to the contents of this paragraph.

6. Defendant Paul Murphy admits the allegations contained in Paragraph Six of the Complaint.

7. The allegations contained in Paragraph Seven of Complaint are not directed to Defendant Paul Murphy. Accordingly, Defendant Paul Murphy, does not respond to the contents of this paragraph.

8. The allegations contained in Paragraph Eight of Complaint are not directed to Defendant Paul Murphy. Accordingly, Defendant Paul Murphy does not respond to the contents of this paragraph.

FACTS

9. The Defendant Paul Murphy upon information and belief admits that 12 year old, Tiffany Moore, was murdered on August 19, 1998. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph Nine of the Complaint.

10. The Defendant Paul Murphy upon information and belief admits the allegations contained in Paragraph Ten of Complaint.

11. The Defendant Paul Murphy upon information and belief admits the allegations contained in Paragraph Eleven of Complaint.

12. The Defendant Paul Murphy upon information and belief admits the allegations contained in Paragraph Twelve of Complaint.

13. The Defendant Paul Murphy upon information and belief admits the allegations contained in Paragraph Thirteen of the Complaint.

14(a-k). The Defendant Paul Murphy is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 14(a) through (k) of the Plaintiffs' Complaint. To the extent that Defendant is called upon to admit or deny the various allegations contained therein, defendant denies the allegations.

15. The Defendant Paul Murphy denies the allegations contained in Paragraph Fifteen of the Complaint.

16. The Defendant Paul Murphy denies the allegations contained in Paragraph Sixteen of the Complaint.

17. The Defendant Paul Murphy does not understand the allegations contained in Paragraph Seventeen of the Complaint to be directed to him. Defendant does not understand that

a response is required of him. To the extent a response is contemplated or required, Defendant Paul Murphy denies the allegations.

18. The Defendant Paul Murphy denies the allegations contained in Paragraph Eighteen of the Complaint.

COUNT I: VIOLATION OF 42 U.S.C. S.1983  
BY DEFENDANTS, ROACH, CALLAHAN, MURPHY AND WALSH

19. The Defendant Paul Murphy restates and re-avers his responses to all paragraphs above as if expressly set forth herein.

20. The Defendant Paul Murphy denies the allegations contained in Paragraph Twenty of Complaint.

COUNT II: VIOLATION OF 42 U.S.C. S. 1983  
CONSPIRACY BY DEFENDANTS CALLAHAN, MURPHY AND WALSH

21. The Defendant Paul Murphy restates and re-avers his responses to all paragraphs above as if expressly set forth herein.

22. The Defendant Paul Murphy denies the allegations contained in Paragraph Twenty-two of Complaint.

23. The Defendant, Paul Murphy, denies the allegations contained in Paragraph Twenty-three of Complaint.

COUNT III:  
VIOLATION OF 42 U.S.C. S. 1983 BY DEFENDANT, CITY OF BOSTON

24. The Defendant Paul Murphy restates and re-avers his responses to all paragraphs above as if expressly set forth herein.

25. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein.

26. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein..

27. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein..

28. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein.

29. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein.

30. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein.

31. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein.

32. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein..

33. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein.

COUNT IV:  
VIOLATION OF M.G.L. C.12 S.11I

34. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein.

35. Defendant Paul Murphy does not understand this paragraph to be directed to him. Accordingly, he does not respond to the same. To the extent a response is contemplated or required, Defendant denies the allegations contained therein.

WHEREFORE, Defendant Paul Murphy demands that the Plaintiff's Complaint shall be dismissed with prejudice.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state claims upon which relief can be granted and therefore should be dismissed.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred under the statute of limitations and/or the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

This action is barred in whole or in part by the doctrine of claim preclusion and/or issue preclusion.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff failed to make a proper presentment pursuant to M.G.L. 258 §4.

FIFTH AFFIRMATIVE DEFENSE

The liability of the Defendant is either limited by or exempted by Massachusetts General Laws Ch. 258.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred in that the conduct of the Defendant was privileged.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred in that the defendant Paul Murphy is protected by qualified immunity.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred on the grounds that the Defendant Paul Murphy acted reasonably and in good faith in the proper and lawful exercise of his discretion.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred because the violations and injuries which he alleges were caused by the plaintiff's own culpable or negligent conduct or the conduct of others and was not the proximate result of any act of the Defendant.

TENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred in that the defendant acted with probable cause to believe that the Plaintiff had engaged in criminal conduct.

ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's alleged injuries or damages were caused by a person or entity over whom the Defendant had no responsibility or control.

TWELFTH AFFIRMATIVE DEFENSE

The Plaintiff's alleged injury or damages were neither caused nor proximately caused by the Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred in that the acts to which the Plaintiff's Complaint refer do not rise to the level of deprivation of constitutional rights under the circumstances of the case.

FOURTEENTH AFFIRMATIVE DEFENSE

The Plaintiff has not been deprived of any rights secured by either the Constitution or the laws of the United States or the Commonwealth of Massachusetts.

FIFTEENTH AFFIRMATIVE DEFENSE

The Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or Commonwealth of Massachusetts or any political subdivision thereof.

SIXTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred under the doctrine of laches for failure to timely prosecute the within action prior to the death of the Defendant, said failure to prosecute having resulted in material prejudice to the Defendant's ability to defend himself.

WHEREFORE, the Defendant requests that this Court enter judgment in favor of the Defendant and against the Plaintiff on each and every count of the Plaintiff's Complaint, and that the Defendants shall recover their costs and attorneys' fees.

JURY CLAIM

Defendant Patricia Murphy, as executrix of the estate of Paul Murphy, respectfully claims a trial by jury of all claims raised in the Plaintiff's Complaint and each defense thereto.

PATRICIA MURPHY,  
As EXECUTRIX OF THE  
ESTATE OF PAUL MURPHY

By her Attorney,

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DATED: April 18, 2005